



*COMMONWEALTH of VIRGINIA*

**DEPARTMENT OF LABOR AND INDUSTRY**

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**AGENDA**

**SAFETY AND HEALTH CODES BOARD**

**State Corporation Commission  
1300 East Main Street, Court Room A  
Second Floor  
Richmond, Virginia**

**Wednesday, August 18, 2010**

**10:00 a.m.**

1. Call to Order
2. Approval of Agenda
3. Approval of Minutes for Board Meeting of January 14, 2010
4. Election of Officers
5. Opportunity for the Public to Address the Board on this issues pending before the Board today or on any other topic that may be of concern to the Board or within the scope of authority of the Board.

*This will be the only opportunity for public comment at this meeting. Please limit remarks to 5 minutes in consideration of others wishing to address the Board.*

6. **Old Business**

- a) 16 VAC 25-60, Final Regulation to Amend Administrative Regulation for the Virginia Occupational Safety and Health (VOSH) Program, 16 VAC 25-60-240 and 16 VAC 25-60-245, Take and Preserve Testimony, Examine Witnesses and Administer Oaths

*Presenter – Mr. Jay Withrow*

7. **New Business**

- a) Federal-Identical Regulations:

- 1) Revising the Notification Requirements in the Exposure Determination Provisions of the Hexavalent Chromium Standards, Direct Final Rule for General Industry, §1910.1026; for Shipyard Employment, §1915.1026; and for Construction, §1926.1126

*Presenter – Mr. Ron Graham*

- 2) Safety Standards for Steel Erection; Final Rule; Technical Amendment to Structural Steel Assembly, §1926.754(a)

*Presenter – Mr. Glenn Cox*

- b) Report on Periodic Review of Certain Regulations

*Presenter – Ms. Reba O’Connor*

8. Items of Interest from the Department of Labor and Industry

9. Items of Interest from Members of the Board

10. Meeting Adjournment

**DRAFT**

**SAFETY AND HEALTH CODES BOARD  
MEETING MINUTES  
THURSDAY, JANUARY 14, 2010**

**BOARD MEMBERS PRESENT:** Mr. Roger Burkhart, Vice Chair  
Dr. Diane Helentjaris, VDH representative  
Mr. M. Frank Hartsoe, Chair  
Mr. Daryl Hines  
Dr. James Mundy  
Mr. Mike Murphy, DEQ representative  
Ms. Eloisa Rea  
Ms. Milly Rodriguez  
Mr. Chuck Stiff  
Mr. Danny Sutton

**BOARD MEMBERS ABSENT:** Mr. Louis Cernak  
Ms. Anna Jolly  
Mr. Satish Korpe  
Mr. Linwood Saunders

**STAFF PRESENT:** Mr. Ray Davenport, Commissioner, Dept. of Labor and Industry  
  
Mr. Bill Burge, Assistant Commissioner – Programs  
Mr. Glenn Cox, Director of VOSH Programs  
Mr. Jay Withrow, Director, Division of Legal Support  
Mr. Ron Graham, Director, Occupational Health Compliance  
Mr. Ed Hilton, Director, Boiler Safety Program  
Mr. John Crisanti, Manager, Office of Planning and Evaluation  
Ms. Reba O'Connor, Regulatory Coordinator  
Ms. Jennifer Wester, Director, Cooperative Programs Division  
Ms. Ashley Mitchell, Staff Attorney  
Ms. Regina Cobb, Agency Management Analyst Senior

**OTHERS PRESENT:** Ms. Beverly Crandell, Federal OSHA  
Ms. Anne Burkhart  
Ms. Diane Paarfus, CCR, Chandler & Halasz, Inc.

## **ORDERING OF AGENDA**

Mr. Frank Hartsoe, Board Chair, called the meeting to order at 10:00 a.m. Mr. Hartsoe then asked for a motion from the Board to approve the Agenda. On proper motion by Mr. Sutton and second by Ms. Rodriguez, the Revised Agenda was approved, as submitted. The motion was carried by unanimous voice vote.

## **APPROVAL OF MINUTES**

Mr. Hartsoe asked the Board for a motion to approve the Minutes for the August 13, 2009, Public Hearing and for the Board Meeting. On proper motion by Mr. Sutton and seconded by Mr. Stiff both Minutes were approved, as submitted, by unanimous voice vote.

## **PUBLIC COMMENTS**

Mr. Hartsoe opened the floor to comments from the public, however, there were no comments.

## **OLD BUSINESS**

### ***16 VAC 25-50, Final Regulatory Action to Amend Boiler and Pressure Vessel Rules and Regulations***

Mr. Ed Hilton, Director, Boiler Safety Programs for the Department of Labor and Industry, requested the Board to consider for adoption the final regulatory action to amend 16 VAC 25-50, Boiler and Pressure Vessel Rules and Regulations.

Mr. Hilton then reviewed the list of 12 final amendments. During this review, Mr. Hilton called the Board's attention to two new revisions since the proposed regulatory stage: #8 Incorporation by reference of the most recent edition "(2007) of B31.1, ASME Code for Power Piping, American National Standards Institute," which replaced the "2006 edition of B31.1, ASME Code for Pressure Piping, American National Institute"; and #10, Incorporation by reference of the most recent edition "(2009) of CSD-1, Controls and Safety Devices for Automatically Fired Boilers" which replaced the "2006 edition of CSD-1, Controls and Safety Devices for Automatically fired Boilers". He explained that the language "and related section on maintenance that includes revised inspector's checklist" was deleted by the Department until ASME decides where it wants to place the language, in the maintenance section or in the Appendix.

Mr. Hilton stated that this amendment is authorized by Title 40.1-51.6.A of the *Code of Virginia*. He informed the Board that the purpose of the final regulatory action is to conform to the most current editions of ASME and National Board safety and inspection codes, as well as in-house administrative fee adjustments to cover increased costs of doing business.

He then summarized the rulemaking process by explaining that a NOIRA was adopted by the Board on February 28, 2008, and was published on June 9, 2008, with a 30-day comment period ending on July 9, 2008. He stated that three comments were received. He added that the Board adopted proposed

regulatory language on November 20, 2008, which was published on July 20, 2009, with a 60-day comment period ending on September 18, 2009. He stated that there were two comments received. He informed the Board that a public hearing was held on August 13, 2009, but there were no comments.

With respect to impact of the amendments on employers, employees and the Department, Mr. Hilton explained that the increase in fees will affect a number of the approximately 50 “R” Stamp holders in the Commonwealth that have their reviews performed by the Department. He stated that during calendar years 2006 and 2007, the Department performed 15 and 14 such inspections, respectively. Mr. Hilton stated that the increased cost to these employers who request a review is \$200 once in a three-year period, and that review to \$1,000. He added that the last time the review fee was increased to address the additional costs of doing business was in the 1999 Edition of the Boiler Rules and Regulations. He informed the Board that the only other alternative for employers would be to have the review performed by the National Board which charges \$3000 for the review.

Lastly, Mr. Hilton explained that the non-fee related changes are necessary to update the regulations to the current editions of ASME and national Board safety and inspection Codes which are incorporated by reference.

Mr. Hilton concluded by recommending, on behalf of the Boiler Safety Compliance Program, that the Board adopt the final amendments to 16 VAC 25-50, Boiler and Pressure Vessel Rules and Regulation as a final regulation of the Board, as authorized by §40.1-51.6.

The motion to adopt the final Amendments to 16 VAC 25-50, Boiler and Pressure Vessel Rules and Regulations was properly made by Mr. Burkhardt, seconded by Dr. Mundy and unanimously carried by voice vote.

***16 VAC 25-60, Revised Proposed Regulation to Amend 16 VAC 25-60, Administrative Regulation for the Virginia Occupational Safety and Health (VOSH) Program, 16 VAC 25-60-240 and 16 VAC 25-60-245, Take and Preserve Testimony, Examine Witnesses and Administer Oaths***

Mr. Jay Withrow, Director of the Office of Legal Support for the Department of Labor and Industry, requested the Board to consider for adoption the revised proposed regulation to amend 16 VAC 25-60-240 and 16 VAC 25-60-245, Take and Preserve Testimony, Examine Witnesses and Administer Oaths.

In summarizing the rulemaking process, Mr. Withrow explained that the Board adopted final regulatory language on August 13, 2009, and that the final regulation was submitted to the Department of Planning and Budget (DPB) for Executive Branch review on September 11, 2009. He further explained that although DPB’s policy memo is considered to be Governor’s Confidential Working Papers, Department staff were informed that DPB had recommended the final regulation “with reservations.” He stated that DPB’s reservations involved the change to 16 VAC 25-60-90.B, concerning a witness’ ability to obtain a copy of their interview statement, and was based on the following factors:

- It is a significant change with the potential to impact numerous employees;
- This change is being added at the final stage without the opportunity for extensive analysis and public comment; and
- It is unclear whether a change to a substantive right exceeds the scope of the NOIRA.

He explained that DPB had suggested to Department staff that the Board either: (1) consider withdrawing the package and submitting it as a revised proposed regulation, or (2) remove the change to §90.B. and submit it later as a separate action.

Mr. Withrow informed the Board that the Department staff recommends pursuing option (1) by re-submitting the regulation as a revised proposed regulation and requesting the Board's approval to publish it subject to a comment period of at least 30 days, pursuant to Va. Code §2.2-4007.03, which provides:

“If an agency wishes to change a proposed regulation before adopting it as a final regulation, it may choose to publish a revised proposed regulation, provided the latter is subject to a public comment period of at least 30 additional days and the agency complies in all other respects with this section.”

Mr. Withrow explained that pursuing option (1) above would allow the Department to make a change to the provision that will hopefully address the concerns expressed by DPB, and then later by the Secretary's Office. He added that the regulation went to the Secretary's Office level, but they saw the DPB reservation so they wanted the Department to take care of DPB's reservation. Mr. Withrow explained that following option (1) allows the Department to publish the revised proposed regulation, give a 30-day comment period, which addresses DPB's concern about time for analysis and comment, and then the Department would come back to the Board with the final regulation again, the Board would have the opportunity to adopt it, and then the Department would go back to DPB again and through the Secretary's office and then to the Governor's office.

Mr. Withrow stated that the Department staff also recommended changing the language in the interview statement section to read as follows:

B. Interview statements of employers, owners, operators, agents, or employees given to the commissioner in confidence pursuant to § 40.1-49.8 of the Code of Virginia shall not be disclosed [for any purpose, except to the individual giving the statement] in accordance with the provisions of §40.1-11 of the Code of Virginia].

Mr. Withrow reminded the Board of the reason for the language that the Department is requesting. He explained that the issue arises when employees are interviewed, particularly, when there is an accident investigation, fatal accident investigation. He stated that in at least a couple of cases recently, attorneys for employers have independently identified the people interviewed, contacted those employee and asked them and/or instructed them to request a copy of their interview statement and to turn that statement over to the attorney. He continued by stating that this practice is allowed under the old language and that the practice could compromise an employee's willingness in future investigations to provide any truthful and full and fair interview statement of what actually happened. He noted that this could have a potential chilling effect, and runs contrary to the legal principals in the Department's Labor Laws in §40.1-49.8(2) which provides that inspectors are permitted to “question privately any such employer, owner, operator, agent or employee”. Mr. Withrow added that the proposed language will retain the basic right of a witness to obtain a copy of his/her interview statement but it will make it clear that release of the statement must be in keeping with the purposes of the Labor Laws of Virginia, as

required by Va. Code §40.1-11. He noted that the impact on employees is very, very small since requests for copies of these statements are very rare for purposes of the regulation (only two or three requests in the last five years).

Making no changes to the Summary of Proposed Regulation, Basis, Purpose and Impact of the Proposed Rulemaking, Mr. Withrow recommended, on behalf of the staff of the Department of Labor and Industry, that the Board consider for adoption as a revised proposed regulation of the Board, amendments to 16 VAC 25-60, the Administrative Regulation for the VOSH Program, which include the revision of 16 VAC 25-60-240 and the addition of 16 VAC 25-60-245, to establish procedures for the Commissioner or his appointed representatives under §40.1-6(5) to take and preserve testimony, examine witnesses and administer oaths under Va. Code §§40.1-6(4) and 40.1-10.

He also recommended that the Board approve an additional 30-day public comment period for the revised proposed amendments to 16 VAC 25-60, the Administrative Regulation for the VOSH Program, pursuant to Va. Code §§40.1-22(5) and 2.2-4007.03.

The motion to adopt the revised proposed amendments to 16 VAC 25-60, Administrative Regulation for the VOSH Program was properly made by Mr. Stiff, seconded by Ms. Rodriguez and unanimously carried by voice vote.

## **NEW BUSINESS**

### ***16 VAC 25-90-1910.102, Revising Standards Referenced in Acetylene Standard for General Industry, §1910.102; Direct Final Rule***

Mr. Ron Graham, Director of Occupational Health Compliance, requested, on behalf of the VOSH Program, that the Board consider for adoption federal OSHA's direct final rule for Revising Standards Referenced in the Acetylene Standard, §1910.102, as published in 74 FR 40441 on August 11, 2009.

Mr. Graham explained that this amendment to the Acetylene Standard is a continuation of federal OSHA's ongoing effort to update its standards that reference or include language from outdated standards published by standards developing organizations ("SDO standards"). He further explained that the revised standard requires that employers ensure that in-plant transfer, handling, storage and use of acetylene cylinders comply with Compressed Gas Association Pamphlet G-1-2003, Acetylene. He stated that the revisions will make the requirements of VOSH's Acetylene standard consistent with federal OSHA and with current industry practices.

He stated that in this direct final rule, federal OSHA used the SDO rulemaking project because it expects the rules to: be noncontroversial; provide protection to employees that is at least equivalent to the protection afforded to them by the outdated SDO standard; and imposes no significant new compliance costs on employers. He added that federal OSHA uses the direct final rule adoption procedure to update or, when appropriate, revoke references to outdated national consensus standards in OSHA rules.

With respect to impact, Mr. Graham informed the Board that updated SDO standards will provide employers with new and more extensive information than the current standards which should facilitate compliance. With respect to impact on employees, he stated that the revisions improve the Acetylene

standard in providing safe workplaces for Virginia workers by incorporating current technology and safe industry work practices. He noted that no impact is anticipated on the Department as a result of adopting this direct final rule.

On behalf of the Department of Labor and Industry, Mr. Graham concluded by recommending that the Board adopt federal OSHA's Direct Final Rule on Revising Standards Referenced in 16 VAC 25-90-1910.102, Acetylene Standard for General Industry, §1910.102, and in 16 VAC 25-90-1910.6, Incorporation by Reference, §1910.6, as authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.4(c), with an effective date of April 15, 2010.

Ms. Rodriguez moved to accept Mr. Graham's recommendation. Mr. Stiff properly seconded the motion which was unanimously approved by voice vote.

***Updating OSHA Standards Based on National Consensus Standards; Personal Protective Equipment; Revised Final Rule***

Mr. Glenn Cox, Director of VOSH Programs, requested, on behalf of the VOSH Program, that the Board consider for adoption federal OSHA's revised final rule for Updating OSHA Standards Based on National Consensus Standards; Personal Protective Equipment, as published in 74 FR 46350 on September 9, 2009.

Mr. Cox explained that federal OSHA issued this final rule to revise the personal protective equipment sections of its general industry, shipyard employment, longshoring, and marine terminals standards regarding requirements for eye and face protective devices, head protection, and foot protection. He continued by stating that federal OSHA updated the references in its regulations to recognize more recent editions of the applicable national consensus standards, and deleted editions of the national consensus standards that PPE must meet if purchased before a specified date. He added that federal OSHA amended paragraph (a)(5)(v)[a] in 29 CFR 1910.94 that requires safety shoes to comply with a specific American National Standards Institute (ANSI). Additionally, he stated that federal OSHA amended paragraph (b)(2)(ii)(I) in 29 CFR 1910.252 which requires filter lenses and plates in eye-protective equipment to meet a test for transmission or radiant energy specified by another ANSI standard. He stated that these rules require that the specified PPE comply with national consensus standards incorporated by reference into the OSHA standards, unless, the employer demonstrates that a piece of equipment is "as effective as" equipment that complies with incorporated national consensus standards. He added that the employer can demonstrate this effectiveness by referencing a more current ANSI standard that may exist or be issued in the future.

He informed the Board that the rule allows employers increased flexibility in choosing PPE for employees, and will place no economic burden on employers because the regulation does not require an employer to update or replace its PPE solely as a result of this rule if the PPE currently in use meets the existing standards. He added that the final rule provides employers with additional options for meeting the designed-criteria requirement which most employers are already using. He stated that employees will now be provided protection based on a standard that reflects state-of-the art technology and materials. Lastly, Mr. Cox stated that the revised final rule will have no additional impact on the Department.

In closing, Mr. Cox recommended, on behalf of the Department staff, that the Board adopt the revised final rule on Updating OSHA Standards Based on National Consensus Standards; Personal Protective Equipment, as authorized by Virginia Code §§40.1-22(5) and 2.2-4006.A.4(c), with an effective date of April 15, 2010.

Mr. Stiff asked whether employers can show “as effective as” if they meet the design requirements, or have to meet design and performance, and if it is both, what would satisfy performance? Mr. Cox responded that he did not know how they could show us anything without having another ANSI standard that covered it, in that case, it would cover both. He added that he could not see how they (employers) would prove it would be “as effective as” without another consensus standard to show it.

Dr. Mundy moved to accept Mr. Cox’s recommendation. Ms. Rodriguez properly seconded the motion which was unanimously approved by voice vote.

### ***Notice of Periodic Review***

Ms. Reba O’Connor, Regulatory Coordinator for the Department, informed the Board that no action is being requested at this time, and that approvals on periodic review reports would be requested at future Board meetings. She then explained that the basis of the regulatory review process is Executive Order Number 36 (06), “Development and Review of Regulations Proposed by State Agencies. She also explained the regulatory review process. Ms. O’Connor informed the Board of a small change that the Department was unaware of prior to mailing the Board packages. She stated that Governor Kaine signed Executive Order 107, which deals with development and review of regulations. She further explained that while this new Executive Order replaces Executive Order 36, it did not make changes in the periodic review of existing regulations.

Ms. O’Connor then informed the Board that two regulations had been identified for review in 2010: 1) 16VAC25-145, Safety Standards for Fall Protection in Steel Erection, Construction Industry; and 2) 16VAC25-155, General Requirements for Clearances, Construction of Electric Transmission and Distribution Lines and Equipment, Construction Industry – Subpart V (§1926.950(c)(1)(i)). She added that the Department staff will be reviewing these regulations over the next several months and will prepare the reports with recommendations to be presented for the Board’s consideration at the next meeting.

Mr. Sutton moved to accept Ms. O’Connor’s report. Mr. Stiff properly seconded the motion which was unanimously approved by voice vote.

### **Items of Interest from Members from the Department of Labor and Industry**

Mr. John Crisanti, Manager of the Office of Planning and Evaluation, informed the Board about House Bill No. 937 of the 2010 General Assembly session, which amends and reenacts §40.1-51.15 of the *Code of Virginia*, relating to fees for boiler and pressure vessel certification. The Bill requires a \$30 fee to be charged for the certificate required under subsection B of §40.1-51.10.

Next, Mr. Withrow updated the Board on two regulations that were adopted as final regulations by the Board: 16VAC25-95, Medical Services and First Aid and 16 VAC25-73, Tree Trimming. He stated that

both final regulations are still in the Governor's office and will be reviewed by the new Governor, McDonnell.

He also stated that the Reverse Signal regulation has been very well received by the regulated community which he attributed to outreach efforts by the Department prior to the regulation becoming effective, such as, the creation of an entire webpage dealing with the regulation (in English and Spanish); training certification form; interpretations; FAQs; creation of pocket-sized quick cards which can also be accessed and printed from the DOLI website, including a plain language version of the regulation; enforcement directives for VOSH personnel, including Local Emphasis Program for heavy equipment, which has been updated and expanded. He also attributed the good response to the regulation to presentations made by Glenn Cox and Bill Burge before interested groups. Mr. Withrow also made a presentation about the regulation before Occupational Safety and Health State Plan Association (OSHSPA), representing all 27 states and territories that have their own state plans like Virginia. The State of Maryland has expressed interest in reviewing our regulation on Reverse Signal.

### **Items of Interest from Members from the Board**

Chair Hartsoe announced his selection of Ms. Rodriguez as Board Secretary.

### **Adjournment**

There being no further business, Mr. Hartsoe requested a motion for adjournment. Mr. Stiff made the motion to adjourn the meeting. Ms. Rodriguez seconded the motion which was carried unanimously by voice vote. The meeting adjourned at 10:53 a.m.

*COMMONWEALTH of VIRGINIA*

**DEPARTMENT OF LABOR AND INDUSTRY**

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**VIRGINIA SAFETY AND HEALTH CODES BOARD**

**BRIEFING PACKAGE FOR**

**AUGUST 18, 2010**

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**Final Regulation to Amend 16 VAC 25-60,  
Administrative Regulation for the Virginia Occupational Safety and Health (VOSH) Program,  
16 VAC 25-60-240 and 16 VAC 25-60-245, Take and Preserve Testimony, Examine Witnesses  
and Administer Oaths**

**I. Action Requested.**

The Virginia Occupational Safety and Health (VOSH) Program requests the Safety and Health Codes Board to consider for adoption as a **revised final** regulation of the Board the following two actions to modify the Administrative Regulation for the VOSH Program. These changes include amending 16 VAC 25-60-10, -20, -90, -100, -130 and -240 and adding a new section 16 VAC 25-60-245 to establish procedures for the Commissioner or his appointed representatives under Va. Code §40.1-6(5) to take and preserve testimony, examine witnesses, and administer oaths under Va. Code §§40.1-6(4) and 40.1-10, pursuant to Va. Code §40.1-22(5).

**II. Purpose.**

The purpose of the **final** regulation is to provide VOSH personnel with procedures on how to exercise the Commissioner's statutory authority to take and preserve testimony, examine witnesses and administer oaths, in instances where such witnesses/employees/supervisors refuse requests for interviews or refuse to answer specific questions posed by a VOSH inspector.

### **III. Summary of Rulemaking Process.**

A Notice of Intended Regulatory Action (NOIRA) was adopted by the Board on October 18, 2007. The NOIRA was published on February 4, 2008, with a 30-day public comment period ending on March 6, 2008. No comments were received.

The Board adopted proposed regulatory language on July 10, 2008. The proposed regulation was published on March 16, 2009, with a 60-day public comment period ending on May 15, 2009. A public hearing was held by the Board on April 16, 2009. No comments were received.

The Board adopted **final** regulatory language on August 13, 2009. The final regulation was submitted to the Department of Planning and Budget (DPB) for Executive Branch review on September 11, 2009. DPB completed its review on September 23, 2009. Although DPB's policy memoranda are considered Governor's Confidential Working Papers, Department staff were informed that DPB had recommended the final regulation "with reservations."

DPB's reservations involved the change to 16VAC25-60-90.B, concerning a witnesses' ability to obtain a copy of their interview statement, and was based on the following factors:

- it is a significant change with the potential to impact numerous employees;
- this change is being added at the final stage without the opportunity for extensive analysis and public comment; and
- it is unclear whether a change to a substantive right exceeds the scope of the NOIRA.

DPB had suggested to Department staff that the Board either: (1) consider withdrawing the package and submitting it as a revised proposed regulation, or (2) removing the change to §90.B. and submitting it later as a separate action.

At its meeting on January 14, 2010, Department staff recommended to the Board that it pursue option (1) by re-submitting the regulation as a revised proposed regulation and requesting the Board's approval to publish it subject to a comment period of at least 30 days, pursuant to Va. Code §2.2-4007.03, which provides:

"If an agency wishes to change a proposed regulation before adopting it as a final regulation, it may choose to publish a revised proposed regulation, provided the latter is subject to a public comment period of at least 30 additional days and the agency complies in all other respects with this section."

Department staff also recommended changing the language in the interview statement section, 16VAC25-60-90.B. The language in brackets is the language deleted in the original final regulation. Department staff recommended reinserting the original language and adding the phrase "pursuant to §40.1-11 of the Code of Virginia":

B. Interview statements of employers, owners, operators, agents, or employees given to the commissioner in confidence pursuant to § [40.1-49.8](#) of the Code of Virginia shall not be disclosed [for any purpose, except to the individual giving the statement] in accordance with the provisions of §40.1-11 of the Code of Virginia.

**The Board adopted revised proposed regulatory language on January 14, 2010, including the above change to 16VAC25-60-90.B. An additional 30-day comment was published in the Virginia Register on April 12, 2010, and ending on May 12, 2010. No comments were received.**

**Further review by DPB of the Board’s January 14, 2010, change to 16VAC25-60-90.B resulted in the following suggested change to that section by DPB:**

~~B. Interview statements of employers, owners, operators, agents, or employees given to the commissioner in confidence pursuant to § 40.1-49.8 of the Code of Virginia shall not be disclosed [ for any purpose, except to the individual giving the statement ] in accordance with the provisions of §40.1-11 of the Code of Virginia. [are confidential. Pursuant to the requirements set forth in §40.1-11 of the Code of Virginia, individuals shall have the right to request a copy of their own interview statements.]~~

#### **IV. Summary of Final Regulation.**

The VOSH Program seeks the amendment of the Administrative Regulation for the VOSH Program to establish procedures for the Commissioner or his appointed representatives under VA. Code §40.1-6(5) to take and preserve testimony, examine witnesses and administer oaths under Va. Code §§40.1-6(4) and 40.1-10.

Following are the requirements of Va. Code §§40.1-6(4) and 40.1-10:

**Va. Code §40.1-6(4), Powers and duties of the Commissioner.**

“The Commissioner shall:

....

**(4) In the discharge of his duties, have power to take and preserve testimony, examine witnesses and administer oaths** and to file a written or printed list of relevant interrogatories and require full and complete answers to the same to be returned under oath within thirty days of the receipt of such list of questions. “ (Emphasis added).

**Va. Code §40.1-10, Offenses in regard to examinations, inspections, etc.**

**“If any person who may be sworn to give testimony shall willfully fail or refuse to answer any legal and proper question propounded to him concerning the subject of such examination as indicated in §§ 40.1-6, or if any person to whom a written or printed list of such interrogatories has been furnished by the Commissioner shall neglect or refuse to answer fully and return the same under oath, or if any person in charge of any business establishment shall refuse admission to, or obstruct in any manner the inspection or investigation of such establishment or the proper performance of the authorized duties of the Commissioner or any of his representatives, he shall be guilty of a misdemeanor. Such person, upon conviction thereof, shall be fined not exceeding \$100 nor less than \$25 or imprisoned in jail not exceeding 90 days, or both.”** (Emphasis added).

The final regulation:

- Specifies the wording of the oath to be administered and the manner in which it would be administered.
- Explains the manner in which the Commissioner would appoint in writing Department personnel as his representatives having the authority to administer such oaths and having the authority to examine witnesses in accordance with the procedures outlined in the regulation.
- Specifies that testimony preserved under the regulation would be recorded by a court reporter.
- Specifies the level of confidentiality that would attach to any testimony preserved under the statute.
- Establishes a procedure for the Commissioner or his authorized representatives to follow in the event that any employer refuses to make an employee or supervisor available to provide testimony in accordance with Va. Code 40.1-6(4). The final regulation provides that an application for an inspection warrant under Va. Code §§40.1-49.8 through 40.1-49.12 for VOSH investigations/inspections will be submitted to the local General District or Circuit Court with jurisdiction over the employer.
- Establishes a procedure for the Commissioner or his authorized representatives to follow in the event that any person who has sworn to give testimony willfully refuses or fails to answer any legal and proper question in accordance with Va. Code §§40.1-10 and 40.1-6(4), up to and including referring such refusal to the appropriate Commonwealth’s Attorney for prosecution of the individual involved.
- Recommends housekeeping changes to the final regulation are primarily in response to a request from the Registrar of Regulations to correct sections which do not comply with Virginia Administrative Code (VAC) formatting requirements:

- Section 10, Definitions, definitions are put in alphabetical order.
- Section 20, Jurisdiction, sections are renumbered, and cross-references to other sections in the regulation are put in proper VAC format.
- Section 90, Release of information and disclosure pursuant to requests under the Virginia Freedom of Information Act and subpoenas, the following language was amended:

B. Interview statements of employers, owners, operators, agents, or employees given to the commissioner ~~in confidence~~ pursuant to § 40.1-49.8 of the Code of Virginia ~~shall not be disclosed [for any purpose, except to the individual giving the statement. [are confidential. Pursuant to the requirements set forth in §40.1-11 of the Code of Virginia, individuals shall have the right to request a copy of their own interview statements.]~~

The Department recommends the above language change in Section 90 as a result of several enforcement cases over the last two years where attorneys for employers have independently identified employees that were interviewed during the VOSH inspection and begun having the employees request copies of their confidential interview statements so the employer could then review the statements. This practice could compromise an employee’s willingness in future accident investigations to provide a statement to VOSH, or to be completely forthcoming with regards to safe working conditions on the job site, if they know their employer can gain access to the interview statement; and runs contrary to the legal principal in the Labor Laws of Virginia that provides that witness statements taken by VOSH inspectors are to remain private/confidential. Va. Code §40.1-49.8(2) provides that our inspectors are permitted to "question privately any such employer, owner, operator, agent or employee."

The revised language in this section will retain the basic right of a witness to a copy of his/her interview statement but will make it clear that release of the statement must be in keeping with the purposes of the Labor Laws of Virginia, as required by Va. Code §40.1-11, which provides that:

“Neither the Commissioner nor any employee of the Department shall make use of or reveal any information or statistics gathered from any person, company or corporation for any purposes other than those of this title.”

- Section 100, Complaints, cross-references to other sections in the regulation were put in proper VAC format.
- Section 130, Construction industry standards, sections renumbered.

- Cross-references to other sections within the Administrative Regulation for the Virginia Occupational Safety and Health (VOSH) Program were put in proper Virginia Administrative Code format for the following sections:
  - 16 VAC 25-60-140, Agricultural standards
  - 16 VAC 25-60-190, General provisions
  - 16 VAC 25-60-210, Permanent variances
  - 16 VAC 25-60-220, Interim order
  - 16 VAC 25-60-260, Issuance of citation and proposed penalty
  - 16 VAC 25-60-270, Contest of citation or proposed penalty
  - 16 VAC 25-60-280, General contest proceedings applicable to the public sector
  - 16 VAC 25-60-310, Contest of abatement period
  - 16 VAC 25-60-320, Extension of abatement time
  - 16 VAC 25-60-330, Informal Conference
  - 16 VAC 25-60-340, Settlement

**V. Basis and Impact of the Rulemaking.**

**A. Basis for Proposed Action.**

The Safety and Health Codes Board is authorized by Title 40.1-22(5) to:

“...adopt, alter, amend, or repeal rules and regulations to further, protect and promote the safety and health of employees in places of employment over which it has jurisdiction and to effect compliance with the federal OSHA Act of 1970 ... as may be necessary to carry out its functions established under this title.... In making such rules and regulations to protect the occupational safety and health of employees, the Board shall adopt the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence that no employee will suffer material impairment of health or functional capacity. However, such standards shall be at least as stringent as the standards promulgated by the federal OSH Act of 1970 (P.L. 91-596). In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experiences gained under this and other health and safety laws....”

In fatal and non-fatal accident investigations particularly as well as other routine inspections, VOSH inspectors are required to interview one or more employees and/or supervisors. VOSH personnel sometimes encounter witnesses/employees/supervisors who refuse to talk with our inspectors or avoid answering specific questions for a variety of reasons. Some employees and supervisors have refused to talk with our inspectors after talking with either the company attorney or a private attorney hired by the

individual. Although such refusals are infrequent, they can have a significant impact on the promptness, thoroughness and quality of the investigation, especially in fatal and non-fatal accident investigations.

It is a generally accepted investigative principle that the closer in time to an event that information about the event is obtained from witnesses, the better the chance is that the information will be accurate. Refusals can result in delays in obtaining witness statements immediately after the accident occurs, potentially resulting in altered memories and less accurate information concerning the cause of the accident or fatality.

In addition, the investigative process is often a very fluid one, where statements made by one witness can lead to additional questions being asked of other witnesses, or previously undisclosed documents being obtained from the employer. Such refusals can not only result in the loss of the individuals' testimony, but can also result in the loss of other potential leads in the investigation. Early access to such information will result in higher quality investigations, and better and more accurate outcomes.

When such refusals do occur, the inability to gather crucial information from eyewitnesses and sometimes the testimony of the injured employee greatly hampers the VOSH program's ability to complete a full and fair investigation of the accident in a timely manner - Va. Code §40.1-49.4.A.3 requires VOSH to issue citations within six months following the occurrence of any alleged violation. The Commissioner's statutory authority to take and preserve testimony, examine witnesses and administer oaths, if implemented through regulation, could be used to obtain necessary testimony very early in the investigative process, avoiding delays and potentially altered memories.

**B. Impact on Employers.**

Employers would have to make employees available for private interview as identified by the Commissioner or his representative in accordance with procedures in the final regulation implementing the statutory requirements in Va. Code §§40.1-6(4) and 40.1-10. The Commissioner currently has the statutory authority to "question privately any such employer, owner, operator, agent or employee" during a VOSH inspection in accordance with Va. Code §40.1-49.8(2). As noted previously, VOSH investigation procedures provide for employee interviews on all inspections, and employers, as a regular course of business, make their employees available for such interviews without limitation. VOSH does not believe the final regulation will have a significant cost impact on employers for the following reasons:

- VOSH estimates that it will seek to use the new procedures in the final regulation to require an employer to make an employee available for an interview on an average of five or fewer cases per year.

- The average length of a VOSH interview is normally 15 minutes or less; however, in accident cases an interview may last up to 60-90 minutes. Significant down time for employers or employees is not anticipated.
- Interview locations would normally be at the employer's worksite, an agreed to alternate site, or at the local VOSH Office. Significant travel costs are not anticipated.
- VOSH will assume the cost of transcription services.

**C. Impact on Employees.**

Employees would have to provide testimony in accordance with any procedures implementing the statutory requirements in Va. Code §§40.1-6(4) and 40.1-10. As noted previously, VOSH investigation procedures provide for employee interviews on all inspections, and employees and supervisory personnel regularly agree, without limitation, to be interviewed. VOSH does not believe the final regulation will have a significant cost impact on employees for the reasons listed in C. above.

**D. Impact on the Department of Labor and Industry.**

The Department would have to designate and train personnel on the procedures implementing the statutory requirements in Va. Code §§40.1-6(4) and 40.1-10. The average cost of transcription services for a one hour interview is approximately \$200. The VOSH Program estimates that annual costs for interviews under the final regulations would be \$1,000 or less.

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## **RECOMMENDED ACTION**

Staff of the Department of Labor and Industry recommends that the Safety and Health Codes Board consider for adoption as a **final** regulation of the Board, amendments to 16 VAC 25-60, the Administrative Regulation for the Virginia Occupational Safety and Health (VOSH) Program, which include the revision of 16 VAC 25-240 and the addition of 16 VAC 25-60-245, to establish procedures for the Commissioner or his appointed representatives under 40.1-6(5) to take and preserve testimony, examine witnesses and administer oaths under Va. Code §§40.1-6(4) and 40.1-10.

The Department also recommends that the Board state in any motion it may make to amend this regulation that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision of this or any other regulation.

**Final Regulation to Amend 16 VAC 25-60,  
Administrative Regulation for the Virginia Occupational Safety and Health (VOSH) Program,  
16 VAC 25-60-240 and 245, Take and Preserve Testimony, Examine Witnesses  
and Administer Oaths**

As Adopted by the

Safety and Health Codes Board

Date: \_\_\_\_\_



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: \_\_\_\_\_

16 VAC 25-60-240, Walkthrough

16 VAC 25-60-245, Take and Preserve Testimony, Examine Witnesses and Administer Oaths

## Part I

### Definitions

#### 16VAC25-60-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Abatement period" means the period of time defined or set out in the citation for correction of a violation.

**["Board" means the Safety and Health Codes Board. ]**

"Bureau of Labor Statistics" means the Bureau of Labor Statistics of the United States Department of Labor.

"Citation" means the notice to an employer that the commissioner has found a condition or conditions that violate Title 40.1 of the Code of Virginia or the standards, rules or regulations established by the commissioner or the board.

**~~["Board" means the Safety and Health Codes Board. ]~~**

"Commissioner" means the Commissioner of Labor and Industry. Except where the context clearly indicates the contrary, any such reference shall include his authorized representatives.

....

## Part II

### General Provisions

#### 16VAC25-60-20. Jurisdiction.

All Virginia statutes, standards, and regulations pertaining to occupational safety and health shall apply to every employer, employee and place of employment in the Commonwealth of Virginia except where:

**[A. 1.]** The United States is the employer or exercises exclusive jurisdiction;

~~[B. 2.]~~ The federal Occupational Safety and Health Act of 1970 does not apply by virtue of § 4(b)(1) of that Act. The commissioner shall consider ~~[F f]~~ federal OSHA case law in determining where jurisdiction over specific working conditions has been preempted by the regulations of a federal agency; or

~~[C. 3.]~~ The employer is a public employer, as that term is defined in this chapter. In such cases, the Virginia laws, standards and regulations governing occupational safety and health are applicable as stated including ~~[[§§ 10, 30, 280, 290 and 300 of these regulations-16VAC25-60-10, 16VAC25-60-30, 16VAC25-60-280, 16VAC25-60-290, and 16VAC25-60-300.]~~

....

16VAC25-60-90. Release of information and disclosure pursuant to requests under the Virginia Freedom of Information Act and subpoenas.

....

B. Interview statements of employers, owners, operators, agents, or employees given to the commissioner ~~in confidence~~ pursuant to § 40.1-49.8 of the Code of Virginia ~~shall not be disclosed [ for any purpose, except to the individual giving the statement. [are confidential. Pursuant to the requirements set forth in §40.1-11 of the Code of Virginia, individuals shall have the right to request a copy of their own interview statements.]~~

....

16VAC25-60-100. Complaints.

....

F.

...

2. A complaint investigation, which does not involve onsite activity, shall normally be conducted for all complaints that do not meet the criteria listed in ~~[\$100.F.1 above~~ subdivision 1 of this subsection.]

3. The commissioner reserves the right, for good cause shown, to initiate an inspection with regard to certain complaints that do not meet the criteria listed in ~~[\$100.F.1 above;~~ subdivision

**1 of this subsection;** as well as to decline to conduct an inspection and instead conduct an investigation, for good cause shown, when certain complaints are found to otherwise meet the criteria listed in subdivision 1 of this subsection.

....

### Part III

#### Occupational Safety and Health Standards

....

16VAC25-60-130. Construction industry standards.

....

**[A. 1.]** For the purposes of the applicability of such Part 1926 standards, the key criteria utilized to make such a decision shall be the activities taking place at the worksite, not the primary business of the employer. Construction work shall generally include any building, altering, repairing, improving, demolishing, painting or decorating any structure, building, highway, or roadway; and any draining, dredging, excavation, grading or similar work upon real property. Construction also generally includes work performed in traditional construction trades such as carpentry, roofing, masonry work, plumbing, trenching and excavating, tunneling, and electrical work. Construction does not include maintenance, alteration or repair of mechanical devices, machinery, or equipment, even when the mechanical device, machinery or equipment is part of a pre-existing structure.

**[B. 2.]** Certain standards of 29 CFR Part 1910 have been determined by federal OSHA to be applicable to construction and have been adopted for this application by the board.

**[C. 3.]** The standards adopted from 29 CFR Part 1910.19 and 29 CFR Part 1910.20 containing respectively, special provisions regarding air contaminants and requirements concerning access to employee exposure and medical records shall apply to construction work as well as general industry.

....

16VAC25-60-140. Agriculture standards.

....

For the purposes of applicability of such Part 1910 and Part 1928 standards, the key criteria utilized to make a decision shall be the activities taking place at the worksite, not the primary business of the employer. Agricultural operations shall generally include any operation involved in the growing or harvesting of crops or the raising of livestock or poultry, or activities integrally related to agriculture, conducted by a farmer or agricultural employer on sites such as farms, ranches, orchards, dairy farms or similar establishments. Agricultural operations do not include construction work as described in ~~§130.1 of this regulation~~ subdivision 1 of 16VAC25-60-130, nor does it include operations or activities substantially similar to those that occur in a general industry setting and are therefore not unique and integrally related to agriculture.

....

#### Part IV

#### Variances

16VAC25-60-190. General provisions.

....

B. In addition to the information specified in ~~§§200.A and 210.A of this regulation~~ 16VAC25-60-200 A and 16VAC25-60-210 A], every variance application shall contain the following:

1. A statement that the applicant has informed affected employees of the application by delivering a copy of the application to their authorized representative, if there is one, as well as having posted, in accordance with ~~§40 of these regulations~~ 16VAC25-60-40], a summary of the application which indicates where a full copy of the application may be examined;

....

F. The commissioner will grant a variance request only if it is found that the employer has met by a preponderance of the evidence, the requirements of either ~~§200.B.4. or §210.B.4. of these regulations~~ 16VAC25-60-200 B 4 or 16VAC25-60-210 B 4].

....

2. The employer shall post a copy of the commissioner's decision in accordance with ~~[\§40 of these regulations 16VAC25-60-40]~~.

....

G. Any party may within 15 days of the commissioner's decision file a notice of appeal to the board. Such appeal shall be in writing, addressed to the board, and include a statement of how other affected parties have been notified of the appeal. Upon notice of a proper appeal, the commissioner shall advise the board of the appeal and arrange a date for the board to consider the appeal. The commissioner shall advise the employer and employee representative of the time and place that the board will consider the appeal. Any party that submitted written or oral views or participated in the hearing concerning the original application for the variance shall be invited to attend the appeal hearing. If there is no employee representative, a copy of the commissioner's letter to the employer shall be posted by the employer in accordance with the requirements of ~~[\§40 of these regulations 16VAC25-60-40]~~.

....

16VAC25-60-210. Permanent variances.

A. Applications filed with the commissioner for a permanent variance from a standard or regulation shall be subject to the requirements of ~~[\§190 of these regulations 16VAC25-60-190]~~ and the following additional requirements.

....

16VAC25-60-220. Interim order.

....

B. A letter of application for an interim order shall include statements as to why the interim order should be granted and shall include a statement that it has been posted in accordance with ~~[\§40 of these regulations 16VAC25-60-40]~~. The provisions contained in ~~[\§§190.A, 190.B.1. and~~

**190.B.3. of these regulations 16VAC25-60-190 A, B 1 and B 3]** shall apply to applications for interim orders in the same manner as they do to variances.

....

16 VAC 25-60-240

Walkthrough

Walkthrough by the commissioner for the inspection of any workplace includes the following privileges.

1. The commissioner shall be in charge of the inspection and, as part of an inspection, may question privately any employer, owner, operator, agent, or employee. The commissioner shall conduct the interviews of persons during the inspection or at other convenient times. **[The commissioner may take and preserve testimony, examine witnesses and administer oaths as provided for in §245 of these regulations.]**

**[16 VAC 25-60-245**

**Take and Preserve Testimony, Examine Witnesses and Administer Oaths**

- 1. Section 40.1-6(4) of the Code of Virginia authorizes the commissioner, in the discharge of his duties, to take and preserve testimony, examine witnesses and administer oaths. In accordance with §40.1-6(5) of the Code of Virginia, the Commissioner of Labor and Industry may appoint such representatives as are necessary to carry out the functions outlined in §40.1-6(4) of the Code of Virginia. Such appointments shall be made in writing, identify the individual being appointed, the length of appointment, the method of withdrawal of such appointment, and specify what duties are being prescribed.**
- 2. The oath shall be administered by the commissioner's appointed representative to the witness as follows: "Do you swear or affirm to tell the truth".**
- 3. Testimony given under oath shall be recorded by a court reporter.**

4. Questioning of employers, owners, operators, agents or employees under oath shall be in private in accordance with §40.1-49.8(2) of the Code of Virginia.

5. An employer's refusal to make an owner, operator, agent or employee available to the commissioner for examination under this section shall be considered a refusal to consent to the commissioner's inspection authority under §40.1-49.8 of the Code of Virginia. Upon such refusal the commissioner may seek an administrative search warrant in accordance with the provisions contained in §§40.1-49.9 to -49.12 of the Code of Virginia, and obtain an order from the appropriate judge commanding the employer to make the subject owner, operator, agent or employee available for examination at a specified location by a date and time certain.

6. In accordance with §40.1-10 of the Code of Virginia, if any person who may be sworn to give testimony shall willfully fail or refuse to answer any legal and proper question propounded to him concerning the subject of the examination under §40.1-6 of the Code of Virginia, he shall be guilty of a misdemeanor. Such person, upon conviction thereof, shall be fined not exceeding \$100 nor less than \$25 or imprisoned in jail not exceeding 90 days or both. Any such refusal on the part of any person to comply with this section may be referred by the Commissioner of Labor and Industry to the appropriate Commonwealth's Attorney for prosecution.]

....

Part VI

Citation and Penalty

16VAC25-60-260. Issuance of citation and proposed penalty.

....

A.

....

1.

....

e. Notwithstanding subdivision 1 b of this subsection, if the commissioner is first notified of a work-related hazard, or incident resulting in an injury or illness to an employee(s), through receipt of a complaint in accordance with ~~[\$100 of these regulations, 16VAC25-60-100]~~ or referral, the six-month time frame shall not be deemed to commence until the commissioner actually receives the complaint or referral.

....

16VAC25-60-270. Contest of citation or proposed penalty; general proceedings.

....

C. The employer's contest of a citation or proposed penalty shall not affect the citation posting requirements of ~~[\$40 of these regulations 16VAC25-60-40]~~ unless and until the court ruling on the contest vacates the citation.

D. When the commissioner has received written notification of a contest of citation or proposed penalty, he will attempt to resolve the matter by settlement, using the procedures of ~~[\$§330 and 340 of these regulations 16VAC25-60-330 and 16VAC25-60-340]~~.

....

16VAC25-60-280. General contest proceedings applicable to the public sector.

....

E. The commissioner shall seek to resolve any controversies or issues rising from a citation issued to any public employer in an informal conference as described in ~~[\$330 of these regulations 16VAC25-60-330]~~.

F. The contest by a public employer shall not affect the requirements to post the citation as required at ~~[\$40 of these regulations 16VAC25-60-40]~~ unless and until the commissioner's or the court ruling on the contest vacates the citation. A contest of a citation may stay the time permitted for abatement pursuant to § 40.1-49.4 C of the Code of Virginia.

....

## Part VII

### Abatement

16VAC25-60-310. Contest of abatement period.

....

C. The same procedures and requirements used for contest of citation and penalty, set forth at ~~[\$§270, 280, 290, and 300, of these regulations 16VAC25-60-270, 16VAC25-60-280, 16VAC25-60-290, and 16VAC25-60-300]~~, shall apply to contests of abatement period.

....

16VAC25-60-320. Extension of abatement time.

....

C.

....

5. A certification that a copy of the petition has been posted and served on the authorized representative of affected employees, if there is one, in accordance with ~~[\$40 of these regulations 16VAC25-60-40]~~, and a certification of the date upon which such posting and service was made.

....

G. When affected employees, or their representatives object to the petition, the commissioner will attempt to resolve the issue in accordance with ~~[\$330 of these regulations 16VAC25-60-~~

**330]** If the matter is not settled or settlement does not appear probable, objections will be heard in the manner set forth in subsection I of this section.

....

## Part VIII

### Review and Settlement

16VAC25-60-330. Informal conference.

....

E. An employee representative shall be given the opportunity to participate in a conference requested by the employer. This same right will be extended to the employer when an informal conference is requested by employees. It is the duty of the employer, if he has requested a conference, to notify the employees by the means described in ~~[\S40 of these regulations~~ **16VAC25-60-40]** as soon as the time and place of the conference have been established. Upon granting an employee request for a conference, the commissioner is responsible for notifying the employer. The commissioner, at his discretion, may conduct separate portions of the conference with the employer and employee representative.

F. During or following the conference the commissioner may affirm or amend the citations, penalties, or abatement period if the order has not become final. The commissioner shall notify the employer in writing of his decision. The employer shall notify employees of this decision in the manner set forth in ~~[\S40 of these regulations~~ **16VAC25-60-40]**.

....

16VAC25-60-340. Settlement.

....

B. Settlement negotiations will ordinarily take place in the medium of an informal conference. Employees shall be given notice of scheduled settlement discussions and shall be given opportunity to participate in the manner provided for in ~~[\S330.E. of these regulations~~ **16VAC25-60-330 E]**.





COMMONWEALTH of VIRGINIA

DEPARTMENT OF LABOR AND INDUSTRY

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VIRGINIA SAFETY AND HEALTH CODES BOARD

BRIEFING PACKAGE

FOR AUGUST 18, 2010

-----

**Revising the Notification Requirements in the Exposure Determination Provisions of the Hexavalent Chromium Standards, paragraph (d)(4)(i) of §§1910.1026, 1915.1026 and 1926.1126; Direct Final Rule**

**I. Action Requested.**

The Virginia Occupational Safety and Health (VOSH) Program requests the Safety and Health Codes Board to consider for adoption federal OSHA's Direct Final Rule (DFR) for Revising the Notification Requirements in the Exposure Determination Provisions of the Hexavalent Chromium Standards, paragraph (d)(4)(i) of 29 CFR 1910.1026, 29 CFR 1915.1026 and 29 CFR 1926.1126, as published in 75 FR 12681 on March 17, 2010.

The proposed effective date is November 15, 2010.

**II. Summary of the Revised Standard.**

This federal Direct Final Rule (DFR) amends paragraph (d)(4)(i) of the Chromium (VI) standards (29 CFR 1910.1026 – General Industry, 29 CFR 1915.1026 – shipyard employment, and 29 CFR 1926.1126 – Construction). The current final rule established an 8-hour time-weighted average (TWA) exposure limit of 5 micrograms of Cr(VI) per

cubic meter of air ( $5 \mu\text{g}/\text{m}^3$ ) for all sectors. In subparagraph (i) of paragraph (d)(4) of the current final rule -- Exposure notification of determination results -- employers are required to notify workers only of exposures that *exceed* the permissible exposure limit (PEL).

This revision to paragraph (d)(4)(i) would now require employers to notify workers of *all* hexavalent chromium exposure level monitoring results, not just exposures that exceed the PEL. This change mirrors similar provisions in federal OSHA's other substance-specific health standards including, but not limited to:

- lead (29 CFR 1910.1025(d)(8)(i));
- arsenic, 29 CFR 1910.1018(e)(5)(i);
- methylenedianiline (29 CFR 1910.1050(e)(7)(i));
- butadiene, 29 CFR 1910.1051(d)(7)(i); and
- methylene chloride (29 CFR 1910.1052(d)(5)(i)). [75 FR 12682]

### **III. Basis, Purpose and Impact of the Standard/Amendment.**

#### **A. Basis and Purpose.**

On February 28, 2006, federal OSHA published a final rule for Occupational Exposure to Hexavalent Chromium (Cr(VI)) [71 FR 10099]. Public Citizen Health Research Group and other parties petitioned for review of the standard in the U.S. Court of Appeals for the Third Circuit. The court denied the petitions for review on all but one issue. The Third Circuit remanded the employee notification requirements in the standard's exposure determination provisions for further consideration. Specifically, the court directed federal OSHA to explain why it departed from the proposed rule that would require notifying workers of all hexavalent chromium exposures. Workers exposed to this toxic chemical are at greater risk for lung cancer and damage to the nose, throat and respiratory tract.

In response to the Third Circuit's decision, federal OSHA re-examined the record on the issue of whether employees should be notified of all exposure determinations. Federal OSHA confirmed that all of its other substance-specific health standards have broader notification requirements than the 2006 Cr(VI) standard. As a result of these findings, federal OSHA amended the notification requirements in the Cr(VI) standards to require employers to notify affected employees of all exposure determinations, whether above or below the PEL. This decision would make federal OSHA consistent with the language in the proposed chromium standard, as well as past practice in other substance-specific OSHA health standards.

On March 7, 2006, the Safety and Health Codes Board adopted federal OSHA's final rules for Hexavalent Chromium, which was published in 71 FR 10099 on February 28, 2006, along with the following related amendments:

Part 1910.1000, Air Contaminants;  
Part 1917.1, Scope and Applicability for Marine Terminals;  
Part 1918.1, Scope and Application for Longshoring; and  
Part 1926.55, Gases, Vapor, Fumes, Dusts and Mists

The initial effective date for the final rule in Virginia was May 30, 2006 (later changed to June 15, 2006 during the regulatory process), other start-up dates also applied.

On December 6, 2006, the Safety and Health Codes Board also adopted federal OSHA's correction of errors in Parts 1910, 1915 and 1926 of the final rule, with an effective date of March 21, 2007.

**B. What is Direct Final Rulemaking?**

In direct final rulemaking, a federal agency publishes a direct final rule (DFR) in the Federal Register with a statement that the rule will go into effect unless significant adverse comment is received within a specified period of time. An identical proposed rule is often published at the same time. If a significant adverse comment is received, the federal agency withdraws the direct final rule and treats such comment as a response to the proposed rule. Direct final rulemaking is typically used where a federal agency anticipates that a rule will not be controversial, e.g., minor substantive changes to regulations, direct incorporations of mandates from new legislation, and in this case, minor changes to regulations resulting from a judicial remand.

In addition to this Direct Final Rule, federal OSHA also published a companion rule proposing the same changes to the Cr(VI) standards. [75 FR 12485 (March 16, 2010)] In the DFR, federal OSHA stated that it would withdraw the companion proposed rule and confirm the effective date of the DFR if no significant adverse comments were submitted on the DFR. For purposes of this direct final rule, a significant adverse comment is one that explains why the amendments being made to federal OSHA's standards would be inappropriate. Federal OSHA will not consider a comment recommending an additional amendment to be a significant adverse comment unless the comment states why the direct final rule would be ineffective without the addition. Federal OSHA received eight comments in total. They were not determined to be significant adverse comments.

On May 14, 2010, federal OSHA published a notice which announced and explained its determination, confirmed the effective date of the DFR as June 15, 2010, and withdrew the proposed rule that accompanied the direct final rule (DFR). [75 FR 27239]

**C. Impact on Employers.**

This amendment only amends the notification requirement in the Cr(VI) rule. Its requirements will not alter any other substantive requirements of the exposure determination provisions, i.e., the amendment does not change any of the requirements for when or how employers must determine their employees' Cr(VI) exposures. This amendment expands the circumstances in which employers must notify affected employees, either through posting or direct written notice, of the results of required exposure determinations.

Federal OSHA determined that the burden on the regulated community as a result of this change will not be significant in that it only requires notifying additional employees of exposure. [75 FR 12684]

**D. Impact on Employees.**

Federal OSHA determined that this amendment does not compromise the safety or health of employees. It anticipates that employee protection will be enhanced by the amended Cr(VI) standard which will require employers to notify affected employees of all exposure determination results. The amendment will also encourage employees to be more proactive in working safely to control their own exposures through better work practices, and by employees more actively participating in safety program. [75 FR 12683]

**E. Impact on the Department of Labor and Industry.**

There is no impact anticipated on the Department with the adoption of the amendment to the Cr(VI) standard. This adoption by the Board would make VOSH consistent with the language in the proposed federal chromium standard, as well as past practice in other substance-specific VOSH health standards. Federal OSHA did not change any other requirements in the exposure determination or notification provisions.

Federal regulations 29 CFR 1953.23(a) and (b) require that Virginia, within six months of the occurrence of a federal program change, to adopt identical changes or promulgate equivalent changes which are at least as effective as the federal change. The Virginia Code reiterates this requirement in § 40.1-22(5). Adopting these revisions will allow Virginia to conform to the federal program change.

**F. Costs.**

Federal OSHA did not change any of the monitoring or exposure characterization requirements in the final standard. The amended notification provision, when compared to the standard as originally promulgated, will simply require employers to post more names or send more individual notices after exposure determinations are made.

In federal OSHA's view, these costs are not significant and are economically feasible. Therefore, OSHA has certified that this action will not have a significant impact on a substantial number of small entities. [75 FR 12684]

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## **RECOMMENDED ACTION**

Staff of the Department of Labor and Industry recommends that the Safety and Health Codes Board adopt federal OSHA's Direct Final Rule for Revising the Notification Requirements in the Exposure Determination Provisions of the Hexavalent Chromium Standards, paragraph (d)(4)(i) of §§1910.1026, 1915.1026, and 1926.1126, as authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.4(c), with an effective date of November 15, 2010.

The Department also recommends that the Board state in any motion it may make to amend this regulation that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision of this or any other regulation which has been adopted in accordance with the above-cited subsection A.4(c) of the Administrative Process Act.

**Revising the Notification Requirements in the Exposure Determination Provisions of the Hexavalent Chromium Standards, paragraph (d)(4)(i) of §§1910.1026, 1915.1026 and 1926.1126; Direct Final Rule**

As Adopted by the  
Safety and Health Codes Board

Date: \_\_\_\_\_



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: \_\_\_\_\_

16 VAC 25-90-1910.1026, Chromium (VI), General Industry  
16 VAC 25-100-1915.1026, Chromium (VI), Shipyard Employment  
16 VAC 25-175-1926.1126, Chromium (VI), Construction

When the regulations, as set forth in the Direct Final Rule for Revising the Notification Requirements in the Exposure Determination Provisions of the Hexavalent Chromium Standards, paragraph (d)(4)(i) of §§1910.1026, 1915.1026 and 1926.1126, are applied to the Commissioner of the Department of Labor and Industry and/or to Virginia employers, the following federal terms shall be considered to read as below:

Federal Terms

VOSH Equivalent

29 CFR

VOSH Standard

Assistant Secretary

Commissioner of Labor and Industry

Agency

Department

June 15, 2010

November 15, 2010

**Amendments to Standards**

■ For the reasons stated in the preamble, OSHA is amending 29 CFR parts 1910, 1915, and 1926 to read as follows:

**PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS  
[AMENDED]****Subpart A—General**

■ 1. The authority citation for subpart A of part 1910 is revised to read as follows:

**Authority:** Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), 6-96 (62 FR 111), 3-2000 (65 FR 50017), 5-2002 (67 FR 65008), or 5-2007 (72 FR 31160), as applicable.

Sections 1910.7, 1910.8, and 1910.9 also issued under 29 CFR Part 1911. Section 1910.7(f) also issued under 31 U.S.C. 9701, 29 U.S.C. 9a, 5 U.S.C. 553; Pub. L. 106-113 (113 Stat. 1501A-222); and OMB Circular A-25 (dated July 8, 1993) (58 FR 38142, July 15, 1993).

**Subpart Z—Toxic and Hazardous Substances**

■ 2. The authority citation for subpart Z of Part 1910 is revised to read as follows:

**Authority:** Secs. 4, 6, 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), 6-96 (62 FR 111), 3-2000 (65 FR 50017), 5-2002 (67 FR 65008), or 5-2007 (72 FR 31160), as applicable; and 29 CFR part 1911.

All of subpart Z issued under section 6(b) of the Occupational Safety and Health Act of 1970, except those substances that have exposure limits listed in Tables Z-1, Z-2, and Z-3 of 29 CFR 1910.1000. The latter were issued under section 6(a) (29 U.S.C. 655(a)).

Section 1910.1000, Tables Z-1, Z-2, and Z-3 also issued under 5 U.S.C. 553, but not

under 29 CFR part 1911 except for the arsenic (organic compounds), benzene, cotton dust, and chromium (VI) listings.

Section 1910.1001 also issued under section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704) and 5 U.S.C. 553.

Section 1910.1002 also issued under 5 U.S.C. 553, but not under 29 U.S.C. 655 or 29 CFR part 1911.

Sections 1910.1018, 1910.1029, and 1910.1200 also issued under 29 U.S.C. 653.

Section 1910.1030 also issued under Public Law 106-430, 114 Stat. 1901.

■ 3. Section 1910.1026 is amended by revising paragraph (d)(4)(i), to read as follows:

§ 1910.1026 Chromium (VI)

\* \* \* \* \*

(d) \* \* \*

(4) \* \* \*

(i) Within 15 work days after making an exposure determination in accordance with paragraph (d)(2) or paragraph (d)(3) of this section, the employer shall individually notify each affected employee in writing of the results of that determination or post the results in an appropriate location accessible to all affected employees.

\* \* \* \* \*

PART 1915—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIPYARD EMPLOYMENT [AMENDED]

Subpart A—General Provisions

■ 4. The authority citation for part 1915 will continue to read as follows:

Authority: Section 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), 6-96 (62 FR 111), 3-2000 (65 FR 50017), 5-2002 (67 FR 65008), or 5-2007 (72 FR 31160) as applicable; 29 CFR Part 1911.

Subpart Z—Toxic and Hazardous Substances

■ 5. Section 1915.1026, is amended by revising paragraph (d)(4)(i), to read as follows:

§ 1915.1026 Chromium (VI)

\* \* \* \* \*

(d) \* \* \*

(4) \* \* \*

(i) Within 5 work days after making an exposure determination in accordance with paragraph (d)(2) or paragraph (d)(3) of this section, the employer shall individually notify each affected employee in writing of the results of that determination or post the

results in an appropriate location accessible to all affected employees.

\* \* \* \* \*

PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION [AMENDED]

Subpart A—General

■ 6. The authority citation for subpart A of part 1926 is revised to read as follows:

Authority: Section 3704 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 et seq.); sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), 6-96 (62 FR 111), 3-2000 (65 FR 50017), 5-2002 (67 FR 65008), or 5-2007 (72 FR 31160) as applicable; and 29 CFR part 1911.

Subpart Z—Toxic and Hazardous Substances

■ 7. The authority citation for subpart Z of part 1926 is revised to read as follows:

Authority: Section 3704 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 et seq.); Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Orders 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), 6-96 (62 FR 111), 3-2000 (62 FR 50017), 5-2002 (67 FR 65008), or 5-2007 (72 FR 31160) as applicable; and 29 CFR part 11.

Section 1926.1102 of 29 CFR Not Issued Under 29 U.S.C. 655 or 29 CFR Part 1911; Also Issued Under 5 U.S.C. 553

■ 8. Section 1926.1126, is amended by revising paragraph (d)(4)(i), to read as follows:

§ 1926.1126 Chromium (VI)

\* \* \* \* \*

(d) \* \* \*

(4) \* \* \*

(i) Within 5 work days after making an exposure determination in accordance with paragraph (d)(2) or paragraph (d)(3) of this section, the employer shall individually notify each affected employee in writing of the results of that determination or post the results in an appropriate location accessible to all affected employees.

\* \* \* \* \*

[FR Doc. 2010-5734 Filed 3-16-10; 8:45 am]

BILLING CODE 4510-26-P





*COMMONWEALTH of VIRGINIA*  
**DEPARTMENT OF LABOR AND INDUSTRY**

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**VIRGINIA SAFETY AND HEALTH CODES BOARD**

**BRIEFING PACKAGE**

**FOR AUGUST 18, 2010**

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**Safety Standards for Steel Erection; Final Rule;  
Technical Amendment to Structural Steel Assembly, §1926.754 (a)**

**I. Action Requested.**

The Virginia Occupational Safety and Health (VOSH) Program requests the Safety and Health Codes Board to consider for adoption federal OSHA's technical amendment to Structural Steel Assembly, §1926.754 (a), of the final rule on Safety Standards for Steel Erection, as published in 75 FR 27428 on May 17, 2010.

The proposed effective date is November 15, 2010.

**II. Summary of the Technical Amendment.**

Federal OSHA has added a technical amendment in the form of a nonmandatory note to the final rule for the Safety Standards for Steel Erection in 29 CFR 1926.754 (a), Structural Steel Assembly. This technical amendment provides information on existing Federal Highway Administration (FHWA) regulations that may apply to employers engaged in activities covered by federal OSHA's steel erection standards.



### **III. Basis, Purpose and Impact of the Technical Amendment.**

#### **A. Basis.**

OSHA added the note to address a May 15, 2004, fatal highway accident on an interstate highway in Colorado. In the accident, a passenger vehicle passed under an overpass that was being widened. The bracing used to temporarily support a partially installed steel girder collapsed, and the girder fell to the highway below, shearing off the top of the vehicle, and killing the three occupants of the car.

An investigation by the National Transportation Safety Board (NTSB) determined the probable cause of the accident was the insufficient design and installation of the girder's temporary bracing systems. The NTSB also found that a registered engineer did not approve the design which violated national highway safety provisions. Federal Highway Administration (FHWA) regulations generally require employers involved in national highway system construction projects to comply with a number of standards, policies, and specifications published by the American Association of State Highway and Transportation Officials ("AASHTO").

For bridge construction projects (e.g., temporary bracing systems), the federal highway regulations incorporate by reference the AASHTO's Standard Specifications for Highway Bridges, 15th edition, 1992. The 1992 specification requires a registered engineer to prepare and to seal working drawings for "falsework," or temporary framing to support truss structures, in many cases.

#### **B. Purpose.**

Federal OSHA added the note to 29 CFR 1926.754(a) to inform construction employers of the requirements of the FHWA regulations and the standard specifications published by AASHTO to enhance the safety of employees operating on or near structural steel elements used in highway construction, including bridges and other structures.

#### **C. Impact on Employers.**

This technical amendment merely notifies the regulated community of existing federal regulations; it is nonmandatory and disseminated for informational purposes only, does not affect or change any existing rights or obligations, and does not increase regulatory burden.

**D. Impact on Employees.**

Federal OSHA believes that knowledge of the requirements of the FHWA and AASHTO regulatory specifications will enhance the safety of employees operating on or near structural steel elements used in highway construction, including bridges and other structures.

**E. Impact on the Department of Labor and Industry.**

Adoption of this technical amendment containing the nonmandatory note to the steel erection standard will have no additional impact on the Department.

Federal regulations 29 CFR 1953.23(a) and (b) require that Virginia, within six months of the occurrence of a federal program change, to adopt identical changes or promulgate equivalent changes which are at least as effective as the federal change. The Virginia Code reiterates this requirement in § 40.1-22(5). Adopting these revisions will allow Virginia to conform to the federal program change.

Contact Person:

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## **RECOMMENDED ACTION**

Staff of the Department of Labor and Industry recommends that the Safety and Health Codes Board adopt the Technical Amendment to 16 VAC 25-175-1926.754 (a), Structural Steel Assembly, of the Final Rule on Safety Standards for Steel Erection, §1926.754 (a), as authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.4(c), with an effective date of November 15, 2010.

The Department also recommends that the Board state in any motion it may make to amend this regulation that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision of this or any other regulation which has been adopted in accordance with the above-cited subsection A.4(c) of the Administrative Process Act.

**SAFETY STANDARDS FOR STEEL ERECTION; FINAL RULE;  
TECHNICAL AMENDMENT TO STRUCTURAL STEEL ASSEMBLY,  
16 VAC 25-175-1926.754(a)**

As Adopted by the  
Safety and Health Codes Board

Date: \_\_\_\_\_



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: \_\_\_\_\_

16 VAC 25-175-1926.754(a), Structural Steel Assembly

When the regulations, as set forth in the Technical Amendment to Structural Steel Assembly, 16 VAC 25-175-1926.754 (a)(4) of the Final Rule for Safety Standards for Steel Erection, §1926.754 (a), are applied to the Commissioner of the Department of Labor and Industry and/or to Virginia employers, the following federal terms shall be considered to read as below:

Federal Terms	VOSH Equivalent
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Agency	Department
May 17, 2010	November 15, 2010

**PART 1926—[AMENDED]****Subpart R—[Amended]**

- 1. The authority citation for subpart R is revised to read as follows:

**Authority:** Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secs. 4, 6, and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order Nos. 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), and 5–2007 (72 FR 31160); and 29 CFR part 1911.

- 2. Amend § 1926.754 by adding a note after paragraph (a) to read as follows:

**§ 1926.754 Structural steel assembly.**

(a) \* \* \*

**Note to paragraph (a):** Federal Highway Administration (FHWA) regulations incorporate by reference a number of standards, policies, and standard specifications published by the American Association of State Highway and Transportation Officials (AASHTO) and other organizations. (See 23 CFR 625.4). Many of these incorporated provisions may be relevant to maintaining structural stability during the erection process. For instance, as of May 17, 2010, in many cases FHWA requires a Registered Engineer to prepare and seal working drawings for falsework used in highway bridge construction. (See AASHTO Specifications for Highway Bridges, Div. II, § 3.2.1, 15th edition, 1992, which FHWA incorporates by reference in 23 CFR 625.4). FHWA also encourages compliance with AASHTO Specifications that the FHWA regulations do not currently incorporate by reference. (See <http://www.fhwa.dot.gov/bridge/lrfd/index.htm>.)

\* \* \* \* \*

[FR Doc. 2010–10983 Filed 5–14–10; 8:45 am]

**BILLING CODE 4510–26–P**

#### Authority and Signature

This document was prepared under the authority of David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, pursuant to Sections 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), Secretary of Labor's Order 5–2007 (72 FR 31160), and 29 CFR part 1911.

Signed at Washington, DC, on May 4, 2010.

**David Michaels,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

- For the reasons set forth above in the preamble, OSHA is amending 29 CFR part 1926 as follows:



*COMMONWEALTH of VIRGINIA*

**DEPARTMENT OF LABOR AND INDUSTRY**

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**VIRGINIA SAFETY AND HEALTH CODES BOARD**

**BRIEFING PACKAGE FOR**

**AUGUST 18, 2010**

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**PERIODIC REVIEW OF EXISTING REGULATIONS**

**I. Background and Process**

Governor McDonnell's Executive Order 14 (2010), "Development and Review of Regulations Proposed by State Agencies," governs the periodic review or re-evaluation of existing regulations and the regulatory process to promulgate new regulations or amend current regulations.

At the Board meeting on January 14, 2010, the Board was notified that two regulations had been identified for periodic review. The review was to include a determination as to whether the regulations are necessary for the protection of public health, safety, and welfare, and whether they are clearly written and easily understandable. The Virginia Regulatory Town Hall web site contains the citations for the federal/state authority for these regulations and a contact person for each regulation.

The periodic review for each regulation is required to be completed and a report posted on the Town Hall no later than 60 days after the close of the public comment period.

**II. Current Status**

The following regulations have been reviewed:

**16 VAC 25-145**, Safety Standards for Fall Protection in Steel Erection, Construction Industry; and

**16 VAC 25-155, General Requirements for Clearances, Construction of Electric Transmission and Distribution Lines and Equipment, Construction Industry - Subpart V (1926.950 (c)(1)(i))**

The public comment period for these regulations began June 7, 2010 and ended June 29, 2010. No public comments were received. The final reports on these regulations are due to be submitted to the Department of Planning and Budget via the Regulatory Town Hall web site no later than August 28, 2010.

**III. Review and Analysis**

As a result of this periodic review, the Department recommends retention of the above existing regulations in their current form. The Department also recommends that the Board state in any motion it may make in regard to this regulatory action that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision of these regulations or any other regulation which has been adopted in accordance with the applicable subsection of the Administrative Process Act.

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